

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Donald Thomas Wetherall,

PETITIONER,

v.

Warden Cecilia Reynolds,

RESPONDENT.

C/A No. 9:15-cv-01753-TLW

Order

The Petitioner Donald Thomas Wetherall (“Petitioner”), proceeding pro se, submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on July 2, 2014. (ECF No. 1.) On July 22, 2015, Respondent filed a motion for summary judgment and memorandum in support. (ECF Nos. 18, 19.) Petitioner filed a response opposing the Respondent’s motion on August 10, 2015. (ECF No. 22.)

The matter now comes before this Court for review of the Report and Recommendation (“Report”) filed on November 27, 2015 by United States Magistrate Judge Bristow Marchant to whom the case had previously been assigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(a) (DSD). (ECF No. 24.) In the Report, the Magistrate Judge recommends granting the Respondent’s Motion for Summary Judgment and dismissing Petitioner’s § 2254 Petition. (Id.) Petitioner timely filed objections to the Report on November 6, 2015. (ECF No. 26.)

This Court is charged with conducting a de novo review of any portion of the Magistrate Judge’s Report and Recommendation to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636. In reviewing the Magistrate Judge’s recommendation, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Hous. Auth. of City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed the Report and the objections. After careful review of the Report and the objections, the Court **ACCEPTS** the Report. (ECF No. 24.) The Petitioner's objections are **OVERRULED**. (ECF No. 26.) Accordingly, Respondent's motion for summary judgment (ECF No. 19) is **GRANTED**, and Petitioner's motion for relief pursuant to § 2254 (ECF No. 1) is **DENIED**. This action is hereby **DISMISSED**.

The Court has reviewed this petition in accordance with Rule 11 of the Rules Governing Section 2254 Proceedings. The Court concludes that it is not appropriate to issue a certificate of appealability as to the issues raised in this petition. Petitioner is advised that he may seek a certificate from the Fourth Circuit Court of Appeals under Rule 22 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Chief United States District Judge

January 28, 2016
Columbia, South Carolina